

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES M. WEAVER)	
Claimant)	
VS.)	
)	
)	Docket Nos. 1,024,756;
)	1,024,976; & 1,024,977
VALU MERCHANDISERS COMPANY)	
Respondent)	
AND)	
)	
BENCHMARK INSURANCE)	
Insurance Carrier)	

ORDER

Claimant appealed the April 25, 2007, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

There is no dispute that claimant injured his right shoulder working for respondent and that the injury arose out of and in the course of claimant's employment. The only issue before the Judge at the April 24, 2007, hearing was whether respondent and its insurance carrier should be required to appoint a doctor in California to treat claimant. In the April 25, 2007, Order, Judge Hursh denied claimant's request to treat with a California doctor after finding claimant's shoulder injury did not require any additional treatment.

Claimant contends Judge Hursh erred. Claimant argues the Judge exceeded his jurisdiction as the question whether claimant needed medical treatment was not before the Judge. Instead, claimant argues the issue before Judge Hursh was whether claimant, who now lives in California, should treat with a California doctor or whether he should treat with Dr. Stechschulte, who practices in Kansas. Consequently, claimant requests the Board to reverse the April 25, 2007, Order and allow claimant to see a doctor in California.

Conversely, respondent and its insurance carrier contend this appeal should be dismissed as the Board does not have jurisdiction from a preliminary hearing order to review the finding that claimant does not need medical treatment. In the alternative, they

argue the Board should affirm the Judge's finding that claimant's injury does not require additional treatment and, consequently, affirm the April 25, 2007, Order.

The principle issue before the Board in this appeal is whether the Judge exceeded his jurisdiction by denying claimant's request to treat with a California doctor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and the parties' arguments, the undersigned Board Member finds and concludes the Judge did not exceed his jurisdiction by determining whether claimant currently needs medical treatment. Consequently, the issue raised by claimant is not a jurisdictional issue and is not subject to review at this stage of the proceedings.

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an administrative law judge exceeded his or her jurisdiction.¹ This includes review of the preliminary hearing issues listed in K.S.A. 44-534a as jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.²

As indicated above, claimant injured his right shoulder working for respondent. In October 2005, the Judge ordered respondent and its insurance carrier to provide claimant with a list of three names from which the claimant would select an authorized doctor. Claimant selected Dr. Stechschulte as the authorized doctor but claimant never saw him. In June 2006 claimant moved to California. Accordingly, claimant now requests a California doctor to treat his shoulder.

Claimant's request to treat with a California doctor is a request for medical treatment. Accordingly, the Judge has the jurisdiction and authority to address the merits of that request and, therefore, to determine whether claimant presently needs treatment.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a

¹ K.S.A. 2006 Supp. 44-551.

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

Consequently, as the Board does not have jurisdiction to review the April 25, 2007, Order, this appeal should be dismissed.

Moreover, claimant requested the Board to reverse the April 25, 2007, Order and to allow claimant to seek authorized medical treatment from a California doctor. Had claimant prevailed in establishing the Judge had exceeded his jurisdiction by addressing whether claimant currently needs medical treatment, rather than granting the relief claimant now requests, the appropriate resolution would have been to remand the claim back to the Judge for further proceedings to address the merits of claimant's medical request. In short, the outcome claimant requested in this appeal is not available.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned Board Member dismisses claimant's appeal of the April 25, 2007, Order entered by Judge Kenneth J. Hursh.

IT IS SO ORDERED.

Dated this ____ day of July, 2007.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
James P. Wolf, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁴ K.S.A. 44-534a.